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**IN THE
COURT OF APPEALS OF INDIANA**

DENNIS P. PFLUGHAUPT,

Appellant-Plaintiff,

vs.

SHARON PFLUGHAUPT,

Appellee-Defendant.

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No. 64A04-0606-CV-337

APPEAL FROM THE PORTER SUPERIOR COURT

The Honorable James A. Johnson, Magistrate

Cause No. 64D01-0407-DR-6618

January 10, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Dennis Pflughaupt appeals the trial court's order that he transfer \$311,551.65 in assets to Sharon Pflughaupt pursuant to their dissolution of marriage. Dennis raises five issues, which we consolidate and restate as: (1) whether the trial court abused its discretion in determining the marital property's value; and (2) whether the trial court abused its discretion in ordering that Dennis transfer \$311,551.65 worth of assets to Sharon. Concluding that the trial court acted within its discretion in determining the marital property's value and in ordering the transfer of assets, we affirm.

Facts and Procedural History

The facts relevant to this appeal are that Dennis and Sharon were married on May 20, 1989. During their marriage, the couple had one child. This proceeding commenced when Sharon filed a petition for dissolution of marriage on July 23, 2004. Dennis filed a counter-petition for dissolution on August 5, 2004. The trial court heard evidence at hearings on May 8, 2005, and June 14, 2005.

After hearing evidence, the trial court issued a Decree of Dissolution, in which it determined the value of the marital property. The trial court's relevant findings were: (1) the marital residence (the "Residence") had a marital equity value of \$124,900; (2) Dennis's share of an airplane hangar (the "Hangar") had a marital equity value of \$30,750; (3) a Can Corporation savings account (the "Savings Account") had a marital equity value of \$9,372; and (4) a Coca-Cola Corporation investment account (the "Coke Account") had a marital equity value of \$224,515.

The trial court then found that Dennis and Sharon's respective earning capacities

warranted deviation from the presumption of equal division of the marital estate, and that Sharon should take fifty-five percent of the estate. The trial court then awarded \$607,110 in assets to Dennis and \$85,227 in assets to Sharon. The trial court then ordered that Dennis transfer \$311,551.65 in assets to Sharon in order to give her fifty-five percent of the estate's value. Dennis now appeals. Additional facts will be included as required.

Discussion and Decision

I. Standard of Review

“The trial court has broad discretion in ascertaining the value of property in a dissolution action, and its valuation will not be disturbed absent an abuse of that discretion.” Hiser v. Hiser, 692 N.E.2d 925, 927 (Ind. Ct. App. 1998). We will conclude the trial court acted within its discretion if sufficient evidence, and the reasonable inferences made therefrom, support the trial court's decision. Id. We will not reverse the trial court unless its valuation “is clearly against the logic and effect of the facts and circumstances before it.” Id. “Even where the circumstances would support a different award, we do not substitute our judgment for that of the trial court.” Nowels v. Nowels, 836 N.E.2d 481, 485 (Ind. Ct. App. 2005).

“When a party challenges the trial court's division of marital property, he must overcome a strong presumption that the court considered and complied with the applicable statute, and that presumption is one of the strongest presumptions applicable to our consideration on appeal.” In re Marriage of Bartley, 712 N.E.2d 537, 542 (Ind. Ct. App. 1999). We view the trial court's disposition of property in its entirety, and not item by item. Fobar v. Vonderahe, 771 N.E.2d 57, 59 (Ind. 2002). We do so recognizing that the trial court

“may allocate some items of property or debt to one spouse because of its disposition of other items.” Id. at 60. Were we to view items “in isolation and apart from the total mix, it may upset the balance ultimately struck by the trial court.” Id.

II. Trial Court’s Determination of Assets’ Value

The division of property pursuant to a dissolution of marriage is governed in part by Indiana Code section 31-15-7-4, which provides:

- (a) In an action for dissolution of marriage . . . the court shall divide the property of the parties, whether:
 - (1) owned by either spouse before the marriage;
 - (2) acquired by either spouse in his or her own right:
 - (A) after the marriage; and
 - (B) before final separation of the parties; or
 - (3) acquired by their joint efforts.

Under this “one pot” theory of distribution, the trial court must consider, divide, and award all the parties’ assets except for those acquired by a party after the final separation date. Balicki v. Balicki, 837 N.E.2d 532, 539-40 (Ind. Ct. App. 2005), trans. denied.

There is a presumption that the marital property will be divided equally between the two parties. Ind. Code § 31-15-7-5.

However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:

- (1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.
- (2) The extent to which the property was acquired by each spouse:
 - (A) before the marriage; or
 - (B) through inheritance or gift.
- (3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, including the desirability of awarding the family residence or the right to dwell in the family residence for such periods as the court considers just to the spouse having custody of any children.

- (4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.
- (5) The earnings or earning ability of the parties as related to:
 - (A) a final division of property; and
 - (B) a final determination of the property rights of the parties.

Id. A finding relating to one of the factors does not require the trial court to deviate from the presumption of equal distribution; instead, “[w]hether to do so is a matter of trial court discretion in light of all other relevant factors.” Fobar, 771 N.E.2d at 59.

Dennis disputes the trial court’s valuation of four assets. We will address each in turn.

A. The Marital Residence

The trial court determined that the Residence should be valued at \$124,900. At trial, Sharon introduced a Competitive Market Analysis estimating the Residence’s value to be between \$120,000 and \$124,900. Appellant’s App. at 222. Dennis introduced an appraisal, estimating the Residence’s value to be \$123,000. Therefore, substantial evidence of probative value supports the trial court’s valuation of the Residence.¹

Dennis argues, “the court failed to consider the contribution that each party made to the acquisition of the property and the fact that the property was owned by Dennis at the time of the marriage.” Appellant’s Br. at 14. He therefore argues the trial court abused its discretion by failing to reduce the Residence’s marital value by its pre-marriage value. We disagree. The trial court must consider and divide property acquired before the marriage.

¹ Sharon testified that she believed the value of the Residence that should be part of the marital estate should be \$75,000, a figure she believed represented the Residence’s current value minus its value at the time of the marriage. Dennis notes several times throughout his brief that the trial court awarded Sharon more than she specifically requested. However, to the extent that Dennis argues that the trial court was not permitted to award Sharon more than she requested, he cites no supporting authority. See Nowels, 836 N.E.2d at 487-88 (“To the extent [husband] suggests that the trial court may not deviate from the statutory presumption absent a specific request by a party, he offers no authority to support this proposition.”).

Ind. Code § 31-15-7-4(a)(1). Whether or not a party acquired an asset before a marriage is merely one of many factors a trial court considers when determining an asset's marital value. See Chase v. Chase, 690 N.E.2d 753, 756 (Ind. Ct. App. 1998). The trial court's failure to explicitly state in its findings that Dennis owned the Residence before the marriage does not mean that the trial court did not consider this factor. Eye v. Eye, 849 N.E.2d 698, 703 (Ind. Ct. App. 2006). Although the trial court could permissibly have set off the pre-marital value of the Residence to Dennis, it was within its discretion to place the total value of the Residence in the marital pot for distribution. See id.

B. The Hangar

Dennis next argues that the trial court abused its discretion in determining that the Hangar, in which Dennis owned a one-fourth interest, had a value of \$123,000. At trial, Sharon submitted an e-mail from Dennis's brother to an individual known as "Ken" indicating that the Hangar had been assessed at \$123,000. Dennis submitted a property assessment from the Porter County Assessor showing the Hangar's value to be \$17,600. Dennis also points to various evidence relating to the Hangar's condition and attributes, and argues that the \$123,000 figure in the e-mail must be a typographical error. However, Dennis neither presented evidence at trial challenging the validity of the e-mail, nor called his brother as a witness to testify that the figure was an error. Dennis's argument boils down to a request that we reweigh the evidence, and accept the figure in his exhibit over the figure in Sharon's exhibit. We will not reweigh evidence in this manner on appeal. We conclude that sufficient evidence supports the trial court's valuation of the Hangar as \$123,000, and Dennis's one-fourth interest in the Hangar as \$30,750.

C. The Savings Account

With regard to the date of valuation, “[o]ur Supreme Court ‘has made clear that the trial court has discretion when valuing the marital assets to set any date between the date of filing the dissolution petition and the date of the hearing.’” J.M. v. N.M., 844 N.E.2d 590, 602 (Ind. Ct. App. 2006), trans. denied (quoting Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996)). At trial, Sharon introduced a statement indicating that the Savings Account’s balance was \$9,371.99 on April 2, 2004. In his brief, Dennis states, “Dennis testified that by the date of filing on July 23, 2004, the account had been reduced . . . to the sum of \$500.” Appellant’s Br. at 17. Dennis misstates his testimony. Dennis actually testified that he withdrew money “the first week in August.” Tr. at 70. Therefore, the evidence actually indicates that Dennis reduced the amount of money in the Savings Account after Sharon filed her petition. Absent any evidence of a withdrawal between April 2 and July 23, the only evidence before the trial court of the Savings Account’s balance on the date Sharon filed her petition was the April 2 statement, showing a balance of \$9,372. It was within the trial court’s discretion to value the Savings Account at \$9,372.

D. The Coke Account

The uncontradicted evidence indicates that the Coke Account’s value at the time of the final hearing was \$266,919. The Coke Account’s value at the time of the marriage was \$42,796.53, which the trial court set off to Dennis, leaving \$224,149.47 for distribution.²

² By our calculations, the amount set off by the trial court plus the amount placed in the marital

Dennis argues that the trial court abused its discretion in failing to set off the entire Coke Account to him. He argues that he is entitled to the entire Coke Account because the parties neither deposited nor withdrew money from this account during the marriage, and its value increased based solely on the market. We have previously upheld a trial court's decision to set off an entire asset where the wife inherited the asset, did not commingle the asset with other marital property, did not treat the asset as marital property, and the husband did not contribute to the asset. Castaneda v. Castaneda, 615 N.E.2d 467, 470-71 (Ind. Ct. App. 1993). However, as our supreme court explained:

Castaneda does not stand for the proposition that a trial court is required to reach an unequal division of property because one spouse brought some items separately to the marriage. Rather, Castaneda permits the trial court, in its discretion, to choose to distribute the marital property unequally in favor of one spouse based on statutorily identified considerations . . . Whether to do so is a matter of trial court discretion in light of all other relevant factors.

Fobar, 771 N.E.2d at 59.

The trial court would have acted within its discretion if it had set off the entire Coke Account to Dennis. However, it was also within the trial court's discretion to set off only the value of the Coke Account prior to the marriage. We reiterate that we do not look at individual dispositions in isolation. The trial court included the Coke Account's post-marriage accumulation in the marital pot as part of its ultimate disposition of assets between the parties. We recognize that were we to set this asset over to a party on appeal, it would upset the trial court's overall division of assets. We conclude that Dennis has failed to meet his burden of demonstrating that the trial court abused its discretion.

estate totals \$266,946.

III. Transfer of Assets

Indiana Code section 31-15-7-4 identifies the procedures through which the trial court may effect the distribution of assets:

- (b) The court shall divide the property in a just and reasonable manner by:
 - (1) division of the property in kind;
 - (2) setting the property or parts of the property over to one (1) of the spouses and requiring either spouse to pay an amount, either in gross or in installments, that is just and proper;
 - (3) ordering the sale of the property under such conditions as the court prescribes and dividing the proceeds of the sale; or
 - (4) ordering the distribution of benefits described in IC 31-9-2-98(b)(2) or IC 31-9-2-98(b)(3) that are payable after the dissolution of marriage, by setting aside to either of the parties a percentage of those payments either by assignment or in kind at the time of receipt.

Dennis argues that the trial court abused its discretion “in ordering [him] to pay [Sharon] the sum of \$311,551.65, when such judgment amount was not supported by the evidence presented, and to pay said judgment would require a liquidation of the Coca-Cola retirement account, resulting in enormous tax consequences to Dennis that were not taken into consideration by the Court.” Appellant’s Br. at 20. Dennis misstates the trial court’s order, as the trial court did not require Dennis to pay Sharon in cash, but stated that the transfer of assets “may be achieved via the payment of cash or the transfer or rollover of any of the assets awarded to him.” Appellant’s App. at 168.

Dennis’s argument regarding tax consequences is without merit for two reasons. First, Dennis was awarded \$607,110 in assets. After subtracting the value of the Coke Account, he has over \$380,000 in remaining assets.³ Therefore, Dennis could transfer \$311,551.65 to

³ This amount does not include the \$42,796.53 value of the Coke Account or the \$10,838 cash value of a life insurance policy that the trial court set off to Dennis.

Sharon without disturbing the Coke Account. Second, the trial court did not order Dennis to liquidate the Coke Account. It is well established that “[a] taxable event must occur as a direct result of the court-ordered disposition of the marital estate for the resulting tax to reduce the value of the marital estate.” Granger v. Granger, 579 N.E.2d 1319, 1321 (Ind. Ct. App. 1991), trans. denied (emphasis added). Because the court order did not order Dennis to liquidate the Coke Account, it properly declined to speculate as to the potential tax consequences of liquidation. See Dowden v. Allman, 696 N.E.2d 456, 458 n.1 (Ind. Ct. App. 1998) (“Potential tax consequences of a future disposition of property are speculative in nature and should not be considered in making the property distribution.”).

To the extent that Dennis challenges the total amount of the award, the trial court ordered that Sharon receive fifty-five percent of the marital estate based on the parties’ disparate earning capacities. The evidence introduced at trial indicates that Sharon earned \$515.54 per week and Dennis earned \$925 per week. The trial court also considered the fact that Dennis brought assets into the marriage, as it set off roughly \$43,000 of the Coke Account, and roughly \$11,000 of the cash value of a life insurance policy. The evidence provides sufficient support for the trial court’s judgment, and given the great deference we give to trial courts in these matters, and the presumption that it followed the applicable statutes, we cannot say that Dennis has met his burden of demonstrating the trial court abused its discretion in ordering an unequal distribution of assets.

Conclusion

We conclude that the trial court did not abuse its discretion in its valuation of the marital estate or in ordering Dennis to transfer assets to Sharon in order to achieve the trial

court's award.

Affirmed.

SULLIVAN, J., and BARNES, J., concur.